

Office of Personnel Management

§ 370.108

Interest), section 209 (Salary of Government Officials and Employees Payable Only by the United States), section 603 (Making Political Contributions), section 606 (Intimidation to Secure Political Contributions), section 607 (Place of Solicitation), section 643 (Accounting Generally for Public Money), section 654 (Officer or Employee of United States Converting Property of Another), section 1905 (Disclosure of Confidential Information Generally), and section 1913 (Lobbying with Appropriated Moneys);

(iii) Title 31, United States Code, section 1343 (Buying and Leasing Passenger Motor Vehicles and Aircraft), section 1344 (Passenger Carrier Use), and section 1349(b), (Adverse Personnel Actions);

(iv) The Federal Tort Claims Act and any other Federal tort liability statute;

(v) The Ethics in Government Act of 1978;

(vi) Internal Revenue Code of 1986, section 1043 (Sale of Property to Comply with Conflict-of-Interest Requirements); and

(vii) Title 41, United States Code, section 423 (Prohibition on Former Official's Acceptance of Compensation From Contractor).

(2) Does not have any right or expectation for Federal employment solely on the basis of his or her detail;

(3) May not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he or she is detailed;

(4) Is subject to such regulations as the President may prescribe; and

(5) Is covered by 5 U.S.C. chapter 81, Compensation for Work Injuries, as provided in 5 U.S.C. 3704(c).

(c) Individuals detailed under this part may be supervised either by Federal or private sector managers. For example, a Federal employee on detail to a private sector organization may be supervised by a private sector manager. Likewise, a private sector employee on detail to an agency may be supervised by a Federal manager.

(d) As provided in 5 U.S.C. 3704(d), a private sector organization may not charge the Federal Government, as direct or indirect costs under a Federal

contract, for the costs of pay or benefits paid by that private sector organization to an employee detailed to an agency under this part.

(e) Details may be terminated by the agency (agency head or designee) or private sector organization concerned for any reason at any time.

§ 370.107 Details to small business concerns.

(a) The head of each agency must take such actions as may be necessary to ensure that, of the details made to private sector organizations in each calendar year, at least 20 percent are to small business concerns, in accordance with 5 U.S.C. 3703(e)(1).

(b) Agencies must round up to the nearest whole number when calculating the percentage of details to small business concerns needed to meet the requirements of this section. For example, if an agency detailed 11 individuals to private sector organizations during a given year, to meet the 20 percent requirement, that agency must have made at least 3 (rounded up from 2.2) of these details to small business concerns.

(c) For purposes of this section, "year" refers to the 12-month period beginning on date of the enactment of the Act, December 17, 2002, and each succeeding 12-month period in which any assignments are made. Assignments "made" in a year are those commencing in such year, in accordance with 5 U.S.C. 3703(e)(2).

(d) Agencies that do not meet the requirements of this section are subject to the reporting requirements in 5 U.S.C. 3703(e)(3).

(e) An agency that makes fewer than five details to private sector organizations in any year is not subject to this section.

§ 370.108 Reporting requirements.

(a) Agencies using this part must prepare and submit to OPM semiannual reports in accordance with 5 U.S.C. 3706 which must include:

(1) The total number of individuals detailed to, and the total number of individuals detailed from, the agency during the report period;

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(2) A brief description of each detail reported under paragraph (a)(1) of this section including:

(i) The name of the detailed individual, and the private sector organization and the agency (including the specific bureau or other agency component) to or from which such individual was detailed;

(ii) The respective positions to and from which the individual was detailed, including the duties and responsibilities and the pay grade or level associated with each; and

(iii) The duration and objectives of the individual's detail; and

(3) Such other information as OPM considers appropriate.

(b) Reports are due to OPM no later than April 7 and October 7 of each year for the immediately preceding 6-month periods ending March 31 and September 30, respectively.

(c) Agencies that do not meet the requirements of § 370.107 must prepare and submit annual reports to Congress in accordance with 5 U.S.C. 3703(e)(3), as appropriate.

§ 370.109 Agency plans.

Before detailing agency employees or receiving private sector employees under this part, an agency must establish an Information Technology Exchange Program Plan. The plan must include, but is not limited to, the following elements:

(a) Designation of the agency officials with authority to review and approve details;

(b) Estimated number of candidates needed, both private sector and Federal employees, to address IT workforce needs within the agency;

(c) Criteria for the selection of agency employees for a detail under this part. At a minimum, each agency must:

(1) Announce the detail, including eligibility requirements, to all eligible employees;

(2) Provide for employee nomination by their organization or self-nomination, to include endorsement by their respective supervisor;

(3) Forward nominations to designated agency reviewing and approving official for final selection.

(4) Consider:

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(i) The extent to which the employee's current competencies and skills are being utilized in the agency;

(ii) The employee's capability to improve, enhance, or learn skills and acquire competencies needed in the agency; and

(iii) The benefits to the agency which would result from selecting the employee for detail.

(d) Return rights and continuing service requirements for Federal employees returning from a detail; and

(e) Documentation and recordkeeping requirements sufficient to allow reconstruction of each action taken under this part to meet agency reporting requirements under § 370.108(a) and (b).

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